



Entered on Docket  
October 19, 2009

Hon. Linda B. Riegle  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

THE RHODES COMPANIES, LLC, aka  
"Rhodes Homes," et al.,<sup>1</sup>

Debtors.

Case No.: BK-S-09-14814-LBR  
(Jointly Administered)

Chapter 11

Affects:

- ☐ All Debtors  
☒ Affects the following Debtor(s)  
Rhodes Design and Development Corporation

Hearing Date: October 2, 2009  
Hearing Time: 1:30 p.m.  
Courtroom 1

**ORDER APPROVING MOTION OF DEBTOR FOR ORDER APPROVING  
STIPULATION TO LIFT THE AUTOMATIC STAY TO EFFECTUATE PREPETITION  
SETTLEMENT WITH THE KITEC HOMEOWNERS – [DOCKET NO. 470]**

<sup>1</sup> The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case No. 09-14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817); Apache Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho Concrete LLC (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited Partnership (Case No. 09-14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc. (Case No. 09-14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-14841); C & J Holdings, Inc. (Case No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design and Development Corporation (Case No. 09-14846); Parcel 20, LLC (Case No. 09-14848); Tuscany Acquisitions IV, LLC (Case No. 09-14849); Tuscany Acquisitions III, LLC (Case No. 09-14850); Tuscany Acquisitions II, LLC (Case No. 09-14852); Tuscany Acquisitions, LLC (Case No. 09-14853); Rhodes Ranch Golf Country Club, LLC (Case No. 09-14854); Overflow, LP (Case No. 09-14856); Wallboard, LP (Case No. 09-14858); Jackknife, LP (Case No. 09-14860); Batcave, LP (Case No. 09-14861); Chalkline, LP (Case No. 09-14862); Glynda, LP (Case No. 09-14865); Tick, LP (Case No. 09-14866); Rhodes Arizona Properties, LLC (Case No. 09-14868); Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887).


Upon consideration of the *Motion of Debtor for Order Approving Stipulation to Lift the Automatic Stay to Effectuate Prepetition Settlement with the Kitec Homeowners* (the "Motion") [Docket No. 470], and good cause appearing,

IT IS HEREBY ORDERED that

1. The Motion is granted.
2. The *Stipulation for Modification of Automatic Stay – Kitec Action*, as amended by the parties and attached hereto as Exhibit A (the "Stipulation"), is approved.
3. The insurer of Rhodes Design and Development Corporation is authorized to make the payments under the Stipulation without further leave of the Court.

APPROVED/DISAPPROVED:

DATED this 2<sup>nd</sup> day of October 2009.

By:   
UNITED STATES TRUSTEE  
August Landis  
Office of the United States Trustee  
300 Las Vegas Blvd. S., Ste. 4300  
Las Vegas, NV 89101

**Prepared and submitted by:**

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# EXHIBIT A

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 Debtors in Possession

**UNITED STATES BANKRUPTCY COURT**  
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☐ All Debtors  
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<sup>1</sup> The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case No. 09-14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817); Apache Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho Concrete LLC (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited Partnership (Case No. 09-14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc. (Case No. 09-14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-14841); C & J Holdings, Inc. (Case No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design and Development Corporation (Case No. 09-14846); Parcel 20, LLC (Case No. 09-14848); Tuscany Acquisitions IV, LLC (Case No. 09-14849); Tuscany Acquisitions III, LLC (Case No. 09-14850); Tuscany Acquisitions II, LLC (Case No. 09-14852); Tuscany Acquisitions, LLC (Case No. 09-14853); Rhodes Ranch Golf Country Club, LLC (Case No. 09-14854); Overflow, LP (Case No. 09-14856); Wallboard, LP (Case No. 09-14858); Jackknife, LP (Case No. 09-14860); Batcave, LP (Case No. 09-14861); Chalkline, LP (Case No. 09-14862); Glynda, LP (Case No. 09-14865); Tick, LP (Case No. 09-14866); Rhodes Arizona Properties, LLC (Case No. 09-14868); Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887).

**STIPULATION FOR MODIFICATION OF AUTOMATIC STAY – KITEC ACTION**

This stipulation and agreed order (the “Stipulation”) is made and entered into by Debtor Rhodes Design and Development Corporation (“RD&D”) and the members of Creditor Class 6 Plaintiffs in the *In re Kitec Fitting Litigation*, Case No. A493302, currently pending in District Court of Nevada, Clark County, (hereinafter collectively referred to as the “Nevada Class Action”) identified below in paragraph A, through their respective counsel, and in reference to the following facts:

A. The Nevada Class Action is, inter alia, a construction defect class action filed on behalf of all owners of a residence in Clark County, Nevada, that contains or at any time contained a Kitec or PlumbBetter plumbing system or components (the “Class”). As a result of numerous mediation and settlement discussions held in connection with the Nevada Class Action, on August 26, 2008, the Class and RD&D reached an agreement to fully and finally resolve the claims of twenty-five (25) Class Plaintiff homeowners against RD&D in the Nevada Class Action (“Rhodes Subclass A”). See Hrg. Trans. *In re Kitec Fitting Litigation*, Eighth Jud. Dist. Ct., Case No. A493302 (August 26, 2008).

B. Pursuant to the terms of the parties’ agreement, in exchange for RD&D’s 1) payment in the amount of \$200,000.00 from insurance proceeds only; 2) assignment of claims against its plumbing subcontractor, Classic Plumbing, Inc., to the Class; and 3) agreement not to pursue additional insured claims (the A.I. claims), the Rhodes Subclass A will dismiss its claims against RD&D in the Nevada Class Action on an address-by-address basis for the RD&D-constructed residences in The Preserves development (“RD&D Settlement”).

C. On March 31, 2009, RD&D filed a chapter 11 petition under the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada. As a result of the pendency of the bankruptcy case, all proceedings against RD&D are automatically stayed.

D. RD&D is willing to stipulate to lift the automatic stay pursuant to 11 U.S.C. § 362 for the sole purposes of permitting: 1) RD&D and Class Counsel, on behalf of Rhodes Subclass A, to jointly move the District Court for preliminary and final approval of their proposed settlement pursuant to NRCP 23(e); 2) RD&D to participate in the Nevada Class Action Formal

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1 Fairness Hearing; and 3) the District Court to enter findings, a judgment, and an order in  
 2 connection with the Nevada Class Action Formal Fairness Hearing if the District Court makes  
 3 the necessary findings pursuant to NRCP 23(e) and NRS 17.245.

4 E. The entirety of the \$200,000.00 settlement amount will be paid from RD&D's  
 5 insurance provider; none of the monies needed to effectuate the Settlement will be provided by  
 6 funds from the RD&D bankruptcy estate.

7 NOW, THEREFORE, IT IS HEREBY STIPULATED by the undersigned parties,  
 8 through their counsel and respective representatives that:

9 (a) The automatic stay shall be modified, subject to Bankruptcy Court approval, to  
 10 permit: 1) RD&D and Class Counsel, on behalf of Rhodes Subclass A, to jointly move the  
 11 District Court for preliminary and final approval of their settlement; 2) RD&D to participate in  
 12 the Formal Fairness Hearing in the Nevada Class Action; and 3) the District Court to enter the  
 13 necessary findings, judgment, and order in the Nevada Class Action Formal Fairness Hearing,  
 14 and to enter related dismissal orders including orders precluding RD&D from asserting claims  
 15 against the IPEX Defendants (as defined in the RD&D Settlement) in the Nevada Class Action if  
 16 the District Court makes the necessary findings. The Settlement in that action and the monies to  
 17 be paid on behalf of RD&D are solely through RD&D's available insurance policies.

18 (b) Any and all portions of Rhodes Subclass A's claims or causes of action, whether  
 19 prepetition or postpetition claims or causes of action, that are not fully satisfied by RD&D's  
 20 available insurance policies under the Settlement are hereby forever waived and discharged as  
 21 against RD&D, even if Rhodes Subclass A is unable to obtain any recovery from any insurance  
 22 policies. Upon entry of the Order approving this Stipulation, only that portion of the Class claim  
 23 filed in the RD&D bankruptcy case concerning Rhodes Subclass A, which has been designated  
 24 as proof of claim number 129, shall be deemed withdrawn. The claims agent shall be directed to  
 25 amend the claims register to reflect that the amount of proof of claim number 129 is reduced  
 26 from the unliquidated, estimated amount of \$5,605,000 to the still unliquidated, estimated  
 27 amount of \$5,308,125. This reduction in the amount of proof of claim number 129 reflects that  
 28 approximately 447 Creditor Class 6 Plaintiffs in the Nevada Class Action remain with claims

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1 against RD&D for homes it constructed with Kitec in the Tiburon and Granada Hills  
 2 communities. By this Stipulation, RD&D does not admit to the validity of the remainder of  
 3 proof of claim number 129 and RD&D reserves any and all defenses and rights to challenge the  
 4 validity of proof of claim number 129.

5 (c) The duplicate Class Claim filed in the jointly administered chapter 11 case of The  
 6 Rhodes Companies, LLC ("RCO"), case number 09-14814, designated as proof of claim number  
 7 60 shall be deemed withdrawn in its entirety. The claims agent shall be directed to amend the  
 8 claims register to reflect that proof of claim number 60 in the RCO case is withdrawn in its  
 9 entirety.

10 (d) The Bankruptcy Court retains jurisdiction to resolve any dispute arising from the  
 11 interpretation or enforcement of this Stipulation.

12 (e) By entering into this Stipulation, RD&D and Rhodes Subclass A are not waiving  
 13 any defenses at law or in equity in connection with their participation in the Nevada Class Action  
 14 Formal Fairness Hearing

15  
 16 DATED this 4th day of September, 2009.

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 27 *Class Plaintiffs*

DATED this 4th day of September, 2009.

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**LR 9021 Certification**

In accordance with LR 9021, counsel submitting this document certifies as follows (check one):

☐ The court has waived the requirement of approval under LR 9021.

☒ No parties appeared or filed written objections, and there is no trustee appointed in the case.

☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below.

Submitted by:

DATED this 2<sup>nd</sup> day of October, 2009.

By: /s/ Zachariah Larson

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